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TULARE COUNTY SUPERIOR COURTS
STATE OF CALIFORNIA, VISALIA DIVISION

In Re SEARCH WARRANT #013487

YORAI BENZEEVI,

Moving Party,

v.

SUPERIOR COURT OF THE COUNTY OF
TULARE,

Respondent,

TULARE COUNTY DISTRICT ATTORNEY,

Real Part in Interest.

CASE NO: _____

SUPPLEMENT TO REAL PARTY IN
INTEREST'S RESPONSE TO NOTICE
OF MOTION AND MOTION OF DR.
YORAI BENZEEVI FOR RETURN OF
SEIZED PROPERTY AND RELATED
EVIDENTIARY HEARING; REQUEST
TO CONTINUE TO SET DATES FOR
EVIDENTIARY HEARING

Date: October 5, 2018
Time: 2:00 pm
Dept: 13

Respondent, the People of the State of California, by and through their
attorneys, TIM WARD, District Attorney, and TREVOR HOLLY, Deputy District Attorney,
submit this SUPPLEMENT TO REAL PARTY IN INTEREST'S RESPONSE TO NOTICE
OF MOTION AND MOTION OF DR. YORAI BENZEEVI FOR RETURN OF SEIZED
PROPERTY AND RELATED EVIDENTIARY HEARING; REQUEST TO CONTINUE TO
SET DATES FOR EVIDENTIARY HEARING related to search warrant #013487. This
motion is based upon the pleadings, points and authorities, evidence, and argument presented
at the hearing of the matter.

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STATEMENT OF FACTS

The following statement of facts is based on the reports, interview, and documents compiled during the investigation. The investigation currently underway is broad and covers areas beyond the Celtic transaction. This statement of facts only addresses the Celtic transaction. This statement a summary of the facts in the case, more detail will be presented at the evidentiary hearing.

I. BACKGROUND

The Tulare Local Heath Care District was organized on November 27, 1945 under the provisions of Division 23 of the California Health and Safety Code, and as such is a public agency. The District provides health care services for the City of Tulare, as well as the southwestern areas of Tulare County. It maintains and operates a hospital, the Tulare Regional Medical Center, as well as other medical facilities. The District does business under the name of Tulare Regional Medical Center, (TRMC herein). TRMC is governed by five Board Members, who are each elected by district. Each Board Member serves a four year term, and regular elections are staggered, with a portion of the Board up for election every two years.

On 05/29/14 TRMC entered into a Management Services Agreement (MSA) with Dr. Benzeevi's company, Health Care Conglomerate Associates (HCCA herein). Dr. Benzeevi owns 100% of HCCA. This is a remarkable one sided agreement which gave Dr. Benzeevi extraordinary powers regarding the management of TRMC. The contract gives HCCA control over the day to day operations, control over all TRMC bank accounts, and control over all TRMC assets. However, all TRMC assets remain TRMC assets; HCCA took no actual ownership over any hospital property. They are a manager, with a fiduciary duty to act in the hospital's best interest.

HCCA was also given extraordinary compensation. The flat management fee started at \$225,000.000 per month, later increasing to \$265,000.00 per month. This is roughly three million dollars per year. All hospital employees were leased from HCCA. For this, HCCA received a premium of 30% of payroll. Dr. Benzeevi stated a portion of the 30%

1 premium was used to pay benefits. The People have found the documentation contradictory
2 in this regard, possibly due to exactly what HCCA defines as “benefits”. Investigation in this
3 matter is ongoing.

4 The MSA did include a provision permitting HCCA to loan money to TRMC.
5 Some loans were made, but these appear to be HCCA deferring the collection of their 30%
6 premium on payroll, rather than actual infusions of cash. In a 2014 email to his accountant,
7 Dr. Benzeevi estimated his revenue from the 30% premium to be nine million dollars per
8 year.

9 The MSA included a provision that HCCA would provide TRMC with a CEO.
10 Two CEOs were provided by HCCA, but at some point in 2015, Dr. Benzeevi decided to
11 appoint himself as CEO of TRMC. Therefore, during the time period in question, Dr.
12 Benzeevi was not only the sole owner of HCCA, the company responsible for managing
13 TRMC, but he was also the CEO of TRMC.

14 II. THE FINANCIAL CONDITION OF TRMC UNDER HCCA MANAGEMENT

15 Under HCCA’s tenure, HCCA consistently reported positive earnings.
16 However, HCCA’s reporting of the hospitals financial condition has been deeply flawed from
17 the beginning of their contract.

18 A. THE MISAPPROPRIATION OF THE BUILD AMERICA TAX REBATES

19 On September of 2009 TRMC issued seventy million dollars of general
20 obligation bonds. This was authorized by Resolution 807. Section 303(c) of the Resolution
21 creates the “Interest and Sinking” fund with the Tulare County Treasury. Section 3.04
22 provides that the County will collect an *ad valorem* tax annually, and that said tax will be
23 placed into the interest and sinking fund to make bond payments. Section 3.04(b) provides
24 that monies received from the federal government for Build America Bonds will be
25 transferred, when received, to the Interest and Sinking Fund.

26 From 2009 to 2015 federal tax rebates received for the Build America Bonds
27 program were received by TRMC and transferred to the County for deposit into the Interest
28

1 and Sinking Fund. In 2015, TRMC stopped forwarding the Build America payments to the
2 County. When County employees inquired, they were told by Delbert Bryant that the funds
3 would not be transferred to the County. Delbert Bryant, who was an HCCA employee hired
4 to be TRMC's Controller, was acting under the direct orders of Alan German, the CFO for
5 TRMC.

6 HCCA, acting as manager for TRMC, retained five payments from the Build
7 America program from July 2015 through August 2017. The total amount misappropriated is
8 \$3,885,916.21. County Officials made the required payments, but this required that tax
9 payers pay a higher *ad valorem* tax than that which would have otherwise been required.

10 This resulted in a material misstatement of TRMC's books as they were able to
11 book approximately four million dollars in cash and income that they were not entitled to.
12 The money was deposited into TRMC's primary account and comingled with its operating
13 funds. This account was used to fund TRMC's operations, which includes the payment of
14 HCCA's fees.

15 B. DEBT OWED TO HCCA BY TRMC

16 TRMC Controller, Delbert Bryant, testified in a deposition dated December
17 8th, 2017, that HCCA did not collect their fees in the early years, but "deferred" them. These
18 debts were not booked into the TRMC records until after TRMC's Auditors, Eide Bailly
19 completed their audit. Their audit is dated 04/25/17, and was presented to the TRMC Board
20 on 04/26/17. Keeping these debts off book was a material misstatement of TRMC's financial
21 condition.

22 C. THE EIDE BAILLY AUDIT FOUND THAT HCCA MATERIALLY 23 MISSTATED TRMC'S BOOKS

24 The Eide Bailly audit found pervasive, material misstatements in TRMC's
25 books, too numerous to list herein. Their first complaint was that there was inadequate
26 support for their audit from HCCA, which compromised their ability to do an effective audit.
27 They specifically addressed the issue of the Build America Bonds, stating that HCCA did not
28 mark a payable to Tulare County when they received the bonds, confirming that the books

1 were misstating the receipt of the Build America payments. However, their most damning
2 statement related to the accounting for the loans from HCCA to TRMC;
3

4 “As auditors, we identified material misstatements specifically regarding
5 transactions with a related party, HCCA, which relate to not only the period under
6 audit, but the prior period. Due to the nature of the related parties and increased
7 scrutiny of related party transactions by outside parties, the appropriate activity
8 should have been recorded properly without adjustments by the auditor.”
9

10 III. TRMC’S DECLINING FINANCIAL POSITION

11 Alan Germany presented the 1st Quarter 2016 financials to the Board on
12 10/26/16. The second quarter financials were presented to the Board on 01/27/17, showing a
13 positive quarter. Alan Germany stated that there had been a drop in cash from \$15.2 million
14 in December 2016 to \$8.6 million in January 2016, due to the Cerner Conversion. However,
15 the hospital was ostensible making money and no seriously problems are noted.

16 In fact, HCCA’s reports during this period are so positive that HCCA
17 presented Resolution 851 to the Board, asking for authorization to borrow \$79 million dollars
18 to complete the Tower Project. The minutes of the meeting are scarce, but by asking for the
19 loan, management is warranting that TRMC has the financial ability to not only obtain the
20 loan, but to pay it back. In light of the glowing financial reports they had received, the Board
21 authorized HCCA and Dr. Benzeevi to seek the loan.

22 The 3rd quarter financial reports are presented to the Board on 04/26/17, and
23 these are also positive and show that the hospital is profitable. Less than two months later, on
24 06/20/17, an emergency Board Meeting is called where the Board is informed that the hospital
25 will run out of cash and go bankrupt unless the Board authorizes HCCA to obtain \$22 million
26 in loans. The Board agrees, in a 3-2 vote, with Board Members Mike Jamaica and Kevin
27 Northcraft opposing.
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2 It should be noted that during this period, from 10/26/16 through 06/20/17,
3 patient volume at the hospital is declining. The \$8 million dollars left after the Cerner
4 expenses steadily bleeds off. Yet, somehow, the hospital remains profitable until June. A
5 short review of the account receivables shows how TRMC remained profitable, as least on
6 paper.

7		
8	August 2016	\$33,540,326.00
9	December 2016	\$35,991,020.00
10	March 2017	\$46,145,865.00
11	June 2017	\$47,225,234.00
12	August 2017	\$60,413,438.00
13		

14 TRMC's account receivables almost doubled in one year. However, when
15 Whipfly (the new hospital management team) took over operation from TRMC in October of
16 2017, they were forced to reduce the total accounts receivable to \$19,113,572.00, as the rest
17 was uncollectable. TRMC controller Delbert Bryant stated in his deposition that the accounts
18 receivable were overstated due to aging receivables that were insufficiently reserved for. He
19 further stated that he did not believe that TRMC had been profitable for the last 8-10 months
20 prior to its bankruptcy and that it had probably been functionally insolvent by April 2017.
21 The only reasonable conclusion from these facts is that HCCA inflated TRMC's accounts
22 receivable in order to create the illusion of a profitable enterprise. HCCA had a powerful
23 motive to do this, as creating a record of continuous profitability helped them maintain
24 political control of TRMC and would allow them to obtain the loans necessary for TRMC to
25 pay their fees.

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2 IV. THE ELECTION OF SENOVIA GUTIERREZ
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4 Mike Jamaica and Kevin Northcraft were elected to the TRMC Board during
5 the regularly scheduled elections held in November 2016. This created a 3-2 split in the
6 Board between HCCA supporters, which included Board Members Dr. P. Kumar, Linda
7 Wilburn, and Richard Torres, and HCCA opponents, which included Board Members Mike
8 Jamaica and Kevin Northcraft. On April 10, 2017, a recall election regarding Board Member
9 Dr. Parmod Kumar was authorized by the Board. His opponent in the election was
10 Senovia Gutierrez.

11 The recall election was held on July 11, 2017, which resulted in Dr. Kumar
12 being recalled. During that same election, Senovia Gutierrez was elected as the representative
13 for the 3rd District. The election was publicly declared and certified on July 20, 2017 by the
14 Tulare County Registrar of Voters and widely reported in the local media. An election packet
15 was shipped via Fed-Ex to TRMC by the Registrar and received at 10:00 a.m. on July 26,
16 2017. Senovia Gutierrez took her Oath of Office on July 25, 2017, administered by the
17 Honorable Judge Gorelick. As of the time of her oath, she was the duly elected representative
18 of her district and a fully empowered Board Member.

19 As part of its management duties, HCCA created and maintained the minutes
20 of Board Meetings and created the agenda for the Board Meetings. Kevin Northcraft twice
21 requested that the Declaration of Senovia Gutierrez's election be placed on the agenda for the
22 next regularly scheduled Board Meeting, which was on 07/26/17. Instead of placing Mrs.
23 Gutierrez on the open meeting agenda, as requested by a sitting Board Member, HCCA
24 created a separate section of the agenda called "Chair Announcements". Then, at the
25 beginning of the meeting, Board Counsel Bruce Green, of the firm Baker & Hostetler, told
26 Board Chair Linda Wilburn that declaring Gutierrez a board member would be a violation of
27 the Brown Act because the declaration of her election was not on the open meeting portion of
28 the agenda. Mrs. Wilburn, heeding what she believed to be the impartial legal advice of the

1 Board's attorney, announced that Mrs. Gutierrez would not be declared a Board Member at
2 that meeting. The meeting erupted into chaos and Board Members Northcraft and Mike
3 Jamaica apparently left the meeting in protest. The meeting was then cancelled.
4

5 It should be noted that during this time period, Bruce Greene represented both
6 HCCA and the TRMC Board. He also had previously represented Dr. Benzeevi personally.
7 The Board had given Dr. Benzeevi the authority to hire counsel for the Board, so Dr.
8 Benzeevi had also hired Bruce Greene as the Board's attorney. This situation created a deep
9 conflict of interest for Mr. Greene and Baker & Hostetler.

10 Rightfully believing that that Senovia Gutierrez was a duly elected and
11 empowered Board Member, Kevin Northcraft, Mike Jamaica, and Senovia Gutierrez called a
12 Board Meeting on 07/27/17. They circulated an agenda and informed both HCCA and the
13 other Board Members of their meeting, but the other Board Members choose not to attend. At
14 that meeting, Board Members Mike Jamaica, Kevin Northcraft, and Senovia Gutierrez voted
15 to rescind Dr. Benzeevi's and HCCA's authorization to obtain loans, both the \$79 million for
16 construction and the \$22 million in emergency loans. In addition, the Board terminated Bruce
17 Greene and Baker & Hostetler and hired the firm of McCormick Barstow to represent them.

18 Bruce Greene, who was ostensibly the Board's attorney and HCCA's attorney
19 refused to recognize the meeting or Senovia Gutierrez's authority as a Board Member. Mr.
20 Greene developed the novel theory that the citizens' elected representative has no power until
21 the sitting Board consents to declare them a Board Member. In an email sent to Mr.
22 Northcraft on 07/27/17 he stated;

23 "Until EC Section 15400 is complied with, the person having the highest
24 number of votes after a recall election is NOT a member of the Board."

25 The People will discuss EC § 15400 at greater length later, but it is important
26 to note what the statute actually states.
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2 "The governing body shall declare elected or nominated to each office voted
3 on at each election under its jurisdiction the person having the highest number of
4 votes for that office, or who was elected or nominated under the exceptions noted
5 in section 15452. The governing board shall also declare the results of each
6 election under its jurisdiction as to each measure voted on at the election." Ca.
7 Elections Code § 15400.
8

9 This is not a permissive statute, but a legal mandate that the person with the
10 highest votes must be recognized as a true Board Member. Nothing in the statute gives
11 anyone the right to deny the lawful authority of an elected representative.

12 The next regularly scheduled Board Meeting was to be held on 08/23/17. It
13 should be noted that Bruce Greene and HCCA refused to accept the agenda submitted by the
14 Board, and the request of Board Members to have items added to the agenda. On the day of
15 the Board Meeting, Linda Wilburn submitted her resignation to the Bruce Greene. In her
16 resignation letter, she specifically resigned as of 12:00 pm on 08/23/17. Mr. Greene emailed
17 a copy of the letter to all Board Members at 3:07 p.m. on 08/23/17. In the same email he
18 stated that Board Member Richard Torres would not be attending and then announced,
19 apparently on his own authority, that the Board Meeting which was to be held at 4:00 p.m.
20 would be canceled for lack of quorum.

21 Mr. Greene had made an error regarding his calculations of a quorum.
22 According to Mr. Greene's theory, the Board consisted of four members, as he refused to
23 recognize Mrs. Gutierrez. With Mrs. Wilburn's resignation, the Board would then consist of
24 three members. According to TRMC bylaws, a majority forms a quorum, so two Board
25 Members would constitute a quorum. The meeting could proceed as planned.

26 Mr. Greene then sent an additional email at 4:00 p.m. stating Mrs. Wilburn
27 told him that she really meant to resign the following day, 08/24/17, at 8:00 a.m. In an
28 interview with the People, Mrs. Wilburn has stated that this is simply not true. She intended

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2 to resign prior to the Board Meeting, she did resign prior to the Board Meeting, and she never
3 told Bruce Greene that she intended to resign the following day. She resigned because she
4 was both exhausted and alarmed by the hostility surrounding issues with the hospital and did
5 not see the point of opposing what was now the majority of the Board.

6 Mr. Northcraft, Mr. Jamaica, and Mrs. Gutierrez arrived to find the meeting
7 room locked and a notice of cancellation posted on the door. A truncated Board Meeting was
8 held in the lobby, which primarily consisted of the Board consulting with their attorneys in
9 closed session. It should be noted that the Agenda called for a ratification of the Board
10 actions taken on 07/27/17, which included terminating Bruce Greene and rescinding
11 Resolution 851 and 852 (which authorize Dr. Benzeevi to obtain loans), as well as declaring
12 Senovia Gutierrez's election.

13 The Board, Senovia Gutierrez, and the District Attorney's Office engaged in
14 civil litigation seeking to force recognition of Senovia Gutierrez's lawful authority as an
15 elected representative of her district. However, she was not recognized until the next
16 regularly scheduled Board Meeting on 09/27/17.

17
18 V. THE SALE AND LEASE AGREEMENT WITH
19 CELTIC COMMERCIAL FINANCING.

20 It appears the first company that HCCA sought financing from in 2017 was a
21 corporation called Leasing Innovations Inc. The People's first record of this is a 05/17/17
22 email from Leasing Innovations, Inc. to Alan Germany. During HCCA's negotiations with
23 Leasing Innovations, HCCA was contacted by another finance company called Celtic
24 Commercial Financing (Celtic herein). The first record the People has of contact with Celtic
25 is an email on 07/28/17. It is notable that this is after the Board terminated Dr. Benzeevi's
26 and HCCA's authority to obtain loans. Dr. Benzeevi and Alan Germany continually pressed
27 for the transaction to be completed quickly, and eventually Celtic consented to an immediate
28 transaction for \$3 million, with a transaction for an additional \$7 million to follow.

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2 The agreement that arose from the negotiations with Celtic was as follows.
3 TRMC would sell hospital equipment, much of which is necessary for operations, to Celtic
4 for \$3,000,000.00. Then, TRMC would lease the equipment from Celtic for three years, at a
5 cost of approximately \$3,000,000.00. This is not a true lease/buyback agreement, because at
6 the end of the lease, Celtic would own all of the equipment.

7 A letter of intent signed by Alan Germany as TRMC's CFO (Chief Financial
8 Officer) was sent on 08/08/17, along with a \$30,000.00 check from TRMC. An acceptance
9 letter, signed by both Dr. Benzeevi as TRMC's CEO and Alan Germany as TRMC's CFO,
10 was signed on 08/23/17, the same day that Bruce Green sabotaged the 08/23/17 Board
11 Meeting. The final closing documents were signed by Dr. Benzeevi and Alan Germany on
12 08/30/17. On 08/31/17, Celtic wired the \$3,000,000.00 to an account named "Tulare Asset
13 Management" (TAM), which is entirely owned and controlled by Dr. Benzeevi.

14 As part of the transaction, HCCA submitted their financial statements, which
15 included the last six months of unaudited statements. As previously discussed, these
16 statements are materially false due to misrepresentations regarding the Build America funds,
17 debt owed to HCCA, and inflated accounts receivable. Dr. Benzeevi also lacked authority to
18 enter into this transaction, as his authority to obtain loans on behalf of TRMC was terminated
19 at the 07/27/17 Board Meeting.

20 Aside from the financial statements and statement regarding their authority to
21 obtain a loan, Dr. Benzeevi, Alan Germany, and HCCA made several other significant
22 misrepresentations. Alan Germany stated in an email dated 08/04/17 that the money would be
23 used to replenish cash revenue and possible pay down bonds, not that it would go directly to
24 the CEO negotiating the loan. Alan Germany signed "Addendum A to Lease Schedule"
25 which stated that TRMC had funds to pay the lease and that TRMC's legislative body had
26 approved appropriation for the payments. This is untrue in both regards, the last budget had
27 no provision or lease payments to Celtic, and no subsequent budget had provided for
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2 payments. TRMC was in no position to make the payments, evidenced by the fact they were
3 forced into bankruptcy in September 2017 and never made a single lease payment to Celtic.

4 The most fundamental misrepresentation that was made to Celtic is who was
5 receiving the funds. Dr. Benzeevi and Alan Germany sold TRMC assets to raise the
6 \$3,000,000.00. Controller Delbert Byant sent wiring instruction that asked for the money to
7 be sent to Dr. Benzeevi's Tulare Asset Management account at Chase Bank. In an email
8 dated 08/31/17 Celtic employees ask Alan Germany if this is the same corporation, and Alan
9 Germany confirms that it is. However, Tulare Asset Management is wholly owned and
10 controlled by Dr. Benzeevi. Employees of Celtic stated that they would not have gone
11 forward with the transaction had they known the money would go directly into an account
12 owned by Dr. Benzeevi and not TRMC.

13
14 VII. THE OPINION LETTER SUBMITTED TO CELTIC COMMERCIAL FINANCE.

15 In order to complete the sale/lease transaction, Celtic required that a lawyer
16 submit an opinion letter verifying that the transaction is legal. This is a standard underwriting
17 procedure when dealing with government entities. Bruce Greene submitted the first portion
18 of the letter. In that letter he specifically states that he is acting as counsel for HCCA. He
19 specifically warrants that the transaction is legal. This is untrue, not only because Dr.
20 Benzeevi no longer had authorization, but also because the transaction was an obvious
21 violation Government Code § 1090 (GC § 1090).

22 An attorney named Michael Allen was retained by Bruce Greene to write an
23 opinion letter regarding whether Senovia Gutierrez was entitled to the power of her office.
24 He adopts the same legal theory first advanced by Bruce Greene, that Elect. Code § 15400 can
25 somehow be read to disenfranchise the voters of their elected representative. Mr. Allen
26 appears to believe that he is representing the Board in this matter, and he notes that he
27 previously represented a Board Member. The People believe that Mr. Allen previously
28 represented Dr. Kumar, the Board Member who was replaced by Senovia Gutierrez.

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2 In fairness to Mr. Allen, it does appear that he was provided with erroneous
3 facts from which to base his opinion on. Importantly, he was not told the proceeds of the
4 transaction would go to benefit Dr. Benzeevi and BakerHostetler, nor was he told the HCCA
5 and Bruce Greene has sabotaged the July and August meeting to prevent Senovia Gutierrez
6 from being declared the winner of the election so that they might use EC §15400 as an excuse
7 to deny her rightful authority under law.

8
9 VIII. THE FLOW OF STOLEN MONEY INTO DR. BENZEEVI'S ACCOUNT

10 As previously stated Celtic wired three million dollars to Dr. Benzeevi's
11 Tulare Asset Management account on 08/31/17 for the sale of hospital property. Dr.
12 Benzeevi is the only signer on the TAM account, which was opened on 11/09/16. Prior to the
13 three million dollar deposit, the account had a balance of approximately fifty six thousand
14 dollars.

15 On 09/07/17, \$133,563.38 was wired to TRMC's Bank of Sierra account. A
16 check to Leasing Innovations was subsequently issued from this account for the same amount
17 as a good faith payment, for a similar transaction Dr. Benzeevi and Alan Germany were
18 pursuing with Leasing Innovations. On 09/11/17, \$499,727.93 was transferred to one of Dr.
19 Benzeevi's HCCA Chase Bank accounts. On 09/10/17, check number 1400 in the amount of
20 \$499,727.93 was issued to Baker & Hostetler from this account. On 09/14/17, a cashier's
21 check was purchased from this account in the amount of \$10,000.00, payable to
22 BakerHostetler Law Firm.

23 On 09/13/2017, Dr. Benzeevi transferred two million four hundred thousand
24 dollars (\$2,400,000.00) from his TAM account to an HCCA account at Chase Bank. Prior to
25 this deposit, the account held \$131,875.77. On 09/18/17, check number 1401 was written
26 from Dr. Benzeevi's HCCA Chase Bank Account for two million four hundred thousand
27 dollars (\$2,400,000.00). This check was deposited into a personal account owned by Dr.
28 Benzeevi and his wife, Amy Benzeevi.

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2 At the time of the deposit, Dr. Benzeevi's personal account had a balance of
3 \$2,454,432.17. As of 5/31/18, the balance was \$1,305,066.31. At the time the stolen funds
4 were recovered on 08/24/18 the balance was \$937,931.04. The balance of the account did not
5 drop below \$937,931.04 during the time period from the deposit of the stolen funds until the
6 funds were recovered.

7
8 **ARGUMENT AND AUTHORITY**
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10 Dr. Benzeevi engaged in a series of self-interested financial transactions while
11 he was the CEO of TRMC, a public hospital district. In doing so he violated Government
12 Code § 1090 and Government Code § 87100. He then unlawfully refused to recognize the
13 authority of voters elected representative, Senovia Gutierrez, as part of a scheme to obtain
14 loans without lawful authority, which he used to pay himself. To accomplish this goal, he and
15 his confederates sabotaged regularly scheduled Board Meeting in order to prevent Senovia
16 Gutierrez from taking the office granted to her by the voters of her district. He then
17 unlawfully sold three million dollars of public property to Celtic Commercial Financing. To
18 complete this transaction he and his co-conspirators submitted false and fraudulent accounting
19 records and made materially false statements to Celtic, obtaining the three million dollars
20 under false pretenses. He then laundered the funds through his Tulare Asset Management
21 account, one of the Chase HCCA accounts, and then into his personal Chase Bank account.

22
23 I. THE LOAN FROM HCCA AND THE CELTIC SALE/LEASE TRANSACTION
24 VIOLATED CRIMINAL CONFLICT OF INTEREST LAWS.

25 G.C. § 1090 prohibits government officials and government employees from
26 making a contract in which they have a financial interest. A violation of G.C. § 1090 is a
27 felony punishable by state prison. (G.C. 1097(a)). As CEO of a public entity, TRMC, Dr.
28 Benzeevi is inarguably a public employee, and clearly under the purview of G.C. § 1090.

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2 The loans ostensibly made from HCCA to TRMC are evidenced by promissory
3 notes. The notes are loans from Dr. Benzeevi's corporation, HCCA, to the public entity that
4 he is CEO of, and controls, TRMC. Each of these promissory notes is a violation of G.C. §
5 1090, as they were loans essentially from Dr. Benzeevi approved by Dr. Benzeevi, a clear
6 conflict of interest. An illegal contract is void as to public policy (*Restatement (First) of*
7 *Contracts* § 548 (1932)). This includes contracts created in violation of G.C. § 1090
8 (*Thomson v. Call* (1985) 38 Cal.3d 633,645). Therefore, the loans that Dr. Benzeevi claimed
9 were void from their inception and he had no right to any monies from TRMC.

10 The contract with the Celtic loan involved a far more egregious violation of
11 California's Conflict of Interest Laws. Dr. Benzeevi was clearly a public employee, and he
12 clearly engaged in a making the Celtic sale/lease contract, even signing the final closing
13 documents. The mere fact that Dr. Benzeevi claimed to be owed ten million dollars would be
14 sufficient to show that he was financially interested, but here we have the CEO of a public
15 entity having the proceeds of a sale of public property wired directly into his account. Given
16 the volume of documents Dr. Benzeevi signed and the length of the negotiations, coupled
17 with his knowledge of where the money would go, there can be little doubt he knowingly and
18 willingly participated in the making of this contract.

19 This was an illegal contract, and as such it was void as against public interest.
20 Therefore, not only is Dr. Benzeevi criminally liable for violation of G.C. § 1090, he never
21 had lawful possession of the three million dollars wired into his account.

22 II. DR. BENZEEVI LACKED AUTHORITY FOR THE CELTIC LOAN
23 TRANSACTION

24 Cal. Elections Code section 15400 states:

25 "The governing body shall declare elected or nominated to each office voted
26 on at each election under its jurisdiction the person having the highest number of votes
27 for the office,..."
28

1 The use of the word "shall" in the language makes it clear that this is not a
2 discretionary act, it is a duty compelled by law. The Board may not decline to accept a duly
3 elected Board Member, it may not declare someone a Board Member who has not been duly
4 elected. Elections Code section 15400 appears in Elections Code Division 15, Chapter 5,
5 which is entitled "Announcement of Results", further indicating that governing bodies were
6 never intended to have any discretion as to whether to accept lawfully elected candidates.

7 Cal. Elections Code section 11384 states that once an officer has been recalled, he
8 must be removed from office upon the qualification of his successor. Elections Code section
9 11386 states that the winning candidate in a recall election must qualify in 10 days after their
10 election. These statutes clearly illustrate the common sense public policy that recall
11 candidates are to immediately take office upon election.

12 Dr. Benzeevi has asked the court to consider the "expert" opinion of Mr. Allen
13 regarding this interpretation of the election law. Mr. Allen is merely a lawyer, and has never
14 represented himself as being anything other than a working lawyer. Dr. Benzeevi paid Mr.
15 Allen to advocate a particular position, and he did. There is nothing about that opinion that is
16 "expert" in any way.

17 It is difficult to see how anyone, even a layman, could interpret E. C. §15400 as
18 prohibiting an elected representative from their office until the Board allows a declaration of
19 their victory, unless they were paid very handsomely to reach an opposite conclusion. One
20 merely needs to consider the implications. Allowing a Board to deny the voters chosen
21 representative their office until the Board declares their victory fundamentally allows a Board
22 to deny an elected representative their office simply by delaying the declaration of their
23 victory indefinitely. This is a fundamental violation of the U.S. Constitution, the California
24 Constitution, and the basic precepts of democracy.

25 The argument that declaring Gutierrez's victory at the 07/26/17 Board Meeting would
26 violate the Brown Act is likewise specious. This is not an item to be "transacted or
27 discussed", as there is no decision to be made (GC § 54954.2(a)). Senovia Gutierrez has been
28 certified as the winner of the election, the Board has no discretion in this matter, and there can
be no violation of the Brown Act by merely announcing a fact that has already occurred.

The attempted cancelation of the second meeting by lying about the timing of
Mrs. Wilburns resignation was simply a heavy handed attempt to achieve the same goal, the

1 denial of any declaration of Senovia Gutierrez's victory. This was a criminal conspiracy to
2 deny the due administration of law pursuant to PC 182(a)(5), and part of a conspiracy to
3 defraud TRMC pursuant to PC 182(a)(4).

4 The use of E.C. § 15400 and the Brown Act were merely excuses for Dr. Benzeevi,
5 Bruce Greene, and HCCA to deny the Board's rightful authority over them. The arguments
6 advanced are an abuse of the law, contrary to the manifest intent of the law, and directly
7 contrary to the voter's constitutional rights and our traditions of democracy.

8 Senovia Gutierrez was a Board Member on the day she took her oath, 07/25/17.
9 Therefore, Dr. Benzeevi's authority to obtain loans using hospital assets was stripped from
10 him on 07/27/17 when a majority of the duly elected Board voted to rescind Resolutions 851
11 and 852. This means that he had no authority to transfer property to Celtic, so the sale of
12 hospital equipment is in violation on PC 424(a) and PC 487(a). This also means that the
13 money he received from Celtic is the product of theft by false pretense in violation of PC
14 487(a), and all money he received from that transaction is stolen and unlawfully possessed.

15 III. THE TRANSFER OF \$3,000,000.00 TO DR. BENZEEVI'S ACCOUNT WAS IN
16 VIOLATION OF PC § 424(a).

17 Penal Code § 424(a)(1) prohibits the misappropriation of public funds by those
18 charged with the safekeeping, transfer, or disbursement of public funds. Dr. Benzeevi had
19 total control of TRMC's finances, and clearly falls under PC § 424(a)(1). PC § 424(a) is a
20 general intent statute, and no specific intent to steal or misappropriate need be proven (*People*
21 *v. Dillon* (1926) 199 Cal. 1, 8). However, a defendant may assert a defense that they had a
22 subjective believe that transaction was authorized by law. (*Stark v. Superior Court* (2011) 52
23 Cal.4th 368). To avail themselves of this defense, a defendant must prove that said believe is
24 objectively reasonable and not the product of criminal negligence.

25 It is clear the Dr. Benzeevi lacked authority to get the loan due to the Board Meeting
26 on 07/27/17. His defense that he had a subjective belief that he had authority is not
27 reasonable, as is reading E.C. § 15400 to deny an elected representative of their office is not
28 reasonable. More importantly, Dr. Benzeevi and Bruce Greene actively sabotaged all
attempts to have Mrs. Gutierrez declared a Board Member. His defense is essentially that he

1 was clever in depriving the citizens of their elected representative, so he was entitled to sell
2 three million dollars of hospital equipment and keep the proceeds.

3 The issues regarding the declaration of Senovia Gutierrez aside, it is important to
4 remember that Dr. Benzeevi was the CEO of a taxpayer owned hospital. He had a legal and
5 fiduciary duty to put the good of the hospital first, not his own interest. When he sold the
6 hospitals property, he did nothing to see to the needs of the hospital, which by September
7 were dire. He only paid himself and his attorneys, which is also in violation of PC 424(a)(1),
8 and therefore he unlawfully possessed the monies in his personal account.

9
10 IV. THE TRANSACTIONS WITH CELTIC COMMERCIAL FINANCE WERE BASED
11 ON FALSE STATEMENT AND THE MONIES RECEIVED WERE THE PRODUCT OF
12 THEFT BY FALSE PRETENSES.

13 Dr. Benzeevi and Alan Germany submitted false financial statements in order
14 to secure financing from Celtic. The financial statements were materially misleading as to the
15 monies unlawfully retained from the federal government pursuant the Build America
16 program. They were materially misleading as to the amount of debt owed to HCCA. In
17 additional, the financials grossly misstated the accounts receivable due to the hospital.

18 In addition, Dr. Benzeevi and Alan Germany made materially false statements
19 to Celtic regarding the use the funds would be put to, their authority to complete the
20 transaction, the legality of the transaction, TRMC's ability to pay the lease, and that TRMC
21 had appropriated funds to make the first years lease payments. Dr. Benzeevi and Alan
22 Germany also misrepresented that the funds would be placed in an account controlled by
23 TRMC and Celtic has stated that they would not have completed the transaction had they
24 known the funds would be deposited into an account solely controlled by Dr. Benzeevi.
25 Therefore, Dr. Benzeevi has no rights to any portion of the three million dollars from Celtic as
26 it was the product of a theft by false pretenses in violation of PC 487(a).

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1 V. THE FUNDS SEIZED FROM DR. BENZEEVI'S ACCOUNT ARE THE FUNDS
2 STOLEN FROM CELTIC LOAN
3

4 There is no dispute that that the two million four hundred thousand (\$2,400,000.00)
5 deposited into Dr. Benzeevi's account derive directly from the Celtic loan transaction. It is
6 undisputed that at the time of the deposit, but prior to this deposit, there was approximately
7 \$2,454,432.17 in the account. During the time period from the deposit of the stolen funds and
8 the seizure of the account, the account balance never fell below the \$937,931.04 that was
9 seized from the account.

10 This situation is analogous to tracing funds in criminal money laundering cases, where the
11 state must prove the funds are derived from criminal activity. In those cases, money already
12 in an account, or innocent moneys already deposited cannot "clean" money derived from
13 criminal activity. (*U.S. v. Rutgard* (9th Cir. 1996) 116 F.3d 1270, 1292). In a California
14 Appellate case regarding tracing criminally derived funds for money laundering charges, the
15 Court stated; "...there were deposits of \$5,000.00 or more in criminally derived funds, and
16 there were transfers out of an account that exceeded the clean money in the account," (*People*
17 *v. Mays* (2007) 148 Cal. App. 4th 13).

18 In this instance, there was \$2,454,432.17 of clean money in the account to begin with, and
19 \$2,400,000.00 of stolen funds then deposited in the account. What the case law makes clear,
20 is that defendant cannot "cleanse" the proceeds of crime by commingling stolen funds with
21 legitimate funds. The whole account is tainted. Therefore, the lowest balance after the funds
22 were deposited represents the amount of stolen funds in the account. The lowest recorded
23 balance is \$937,931.04, and therefore the entire amount is forfeit as stolen property.

24 VI. CONCLUSION

25 The People and the Court have a duty to seize stolen property and return said property
26 to its rightful owner. A defendant is never entitled to the return of seized contraband,
27 including property that is unlawfully possessed or stolen (*People v. Superior Court (McGraw)*
28 (1979) 100 Cal. App. 3d 154). Property, including money, need not be returned where there is
probable cause to believe it is the fruit of an illegal transaction, making it subject to forfeiture

1 under California or federal law. (*People v. \$48,715* (1997) 58 Cal.App.4th 1507; *People v.*
2 *\$497,590* (1997) 58 Cal.App.4th 145.)

3 A CEO of a publicly owned entity simply cannot sell three million dollars worth of
4 public property and keep the proceeds for himself. Such a transaction inherently violates both
5 G.C. § 1090 and P.C. § 424(a)(1). Further, these transactions were done expressly against the
6 wishes of the elected Board and contrary to their vote on 07/27/17 to rescind Dr. Benzeevi's
7 authority to enter into the transaction. Dr. Benzeevi, Alan Germany, and HCCA made
8 material misrepresentations to obtain the three million dollars from Celtic and the money Dr.
9 Benzeevi received into his account is the product of theft by false representation. He cannot
10 clean his ill-gotten gains merely by commingling it with legitimate funds. The money seized
11 from his account is stolen and the Court is duty bound to maintain custody of the funds until
12 their return to their legitimate owner.

13 Dated: 09/28/18

14 Respectfully submitted,

15 TIM WARD
16 DISTRICT ATTORNEY

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18 TREVOR HOLLY
19 DEPUTY DISTRICT ATTORNEY

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